IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2727 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOMABHAI M.VASAVA

Versus

THE GOVERNMENT OF GUJARAT

Appearance:

1. Special Civil Application No. 2727 of 1994

MR DN PANDYA for Petitioner No. 1

MR PRADIP D BHATE A.G.P. for Respondent No. 1-2

MR ADIL MEHTA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 23/02/2004

ORAL JUDGEMENT

The petitioner has approached this Court making a grievance that though he was duly appointed by respondent

no. 3 on the post of Peon by properly following the procedure and that post be duly created in accordance with the staffing pattern setup by respondent no. 1. inspite of that, his service has been terminated without any valid reason after six years of his appointment. His further grievance is that his repeated representations, made to the concerned authorities have been rejected by the respondents. He has, therefore, prayed that the order terminating his service be quashed and the respondents may be directed to reinstate him on the original post together with full backwages.

2. From the record of the petition, it appears that the petitioner was appointed on the post of Peon (Assistant) on ad hoc basis with effect from 1st July, 1980. The letter of appointment is dated 23rd June, 1980. The said appointment was accepted by the petitioner vide letter dated 29th June, 1980. It appears that at the relevant time, no procedure was prescribed for making appointment of the Peon in respondent no. 3. It also appears that Circular issued by the Department of Education, Government of Gujarat dated 27th February, 1980, which amended Circular dated 27th April, 1979, post of peons was prescribed. It stated that for the strength of students 1 to 100 one post of Peon and for the strength of students between 101 to 200, two posts of Peon were sanctioned. In light of the strength sanctioned by the Government and in view of the fact that at the relevant time, the strength of the students in respondent no. 1 was more than 100, the petitioner's appointment was made by public advertisement inviting the candidates to appear in the interview. Upon finding the petitioner to be suitable candidate, he was given appointment as stated above.

2.2. The petitioner continued on the said post till the impugned order terminating his service came to be passed i.e. on 29th August, 1985. It was stated in the said order that the appointment of the petitioner was purely on temporary basis and since respondent no. 3 was being run on the grant made available to it by respondents nos. 1 and 2 and they had raised certain objections with regard to release of grant towards the payment of salary of the petitioner. His service was, therefore, required to be terminated. It is this order, which is now under challenge.

3. It also appears from the record that the petitioner thereafter made representations to different authorities making a grievance regarding illegal termination of his service. Since he did not receive

even the acknowledgment about the receipt of his representations, he ultimately decided to approach this Court in the year 1994 by way of this petition. On 21st June, 1994, this Court (Coram : S.M. Soni, J.) passed an order that the Government should consider the application that was termed as Revision Application which was pending before it, within three weeks from the date of the receipt of writ of this Court. Liberty was also granted to the petitioner to revive this petition in the event the Revision Application was decided against him. The said Revision Application was thereafter disposed of by the Deputy Secretary, Department of Education, vide order dated 28th September, 1994. The said order reveals that on 27th September, 1994, the petitioner alongwith the representatives of the respondents was heard. The order also reveals that while deciding the said application, the concerned Officer had taken into consideration, the Resolution dated 31st December, 1973, of the State Government and came to the conclusion that the said Resolution sanctioned only one post of Peon for respondent no. 3 and since there was no second post of Peon available in the institute duly approved by respondents nos. 1 and 2, appointment of the petitioner on that post could not have been made by respondent no. 3. It was, therefore, decided that the petitioner's request to reinstate him could not be acceded to.

3.1. In view of the decision of the Deputy Secretary, rejecting the Revision Application, the petitioner exercised the liberty granted to him of reviving the petition which was duly permitted by this Court vide order dated 3rd July, 1995 passed in Misc. Civil Application. It is now submitted by Mr.D. N. Pandya learned advocate appearing for the petitioner that the petitioner was duly appointed on the post of Peon which was sanctioned by the respondents, his service could not have been terminated, even when it was given on ad hoc basis without there being any valid reason for the same. In the affidavit it has been submitted that, in view of the requisite strength above 100, the post of peon was duly sanctioned and the petitioner was properly appointed on the same. He, therefore, submitted that only if the respondents were not satisfied with the service of the petitioner, he could have been relieved from the service and not otherwise. He has, further submitted that the Circular which has been relied on by Officer of respondent no. 2 for rejecting Revision Application is not relating to the institution like respondent no. 3 and the reliance placed thereon by the concerned Officer is erroneous. He has also submitted that right from the day one, he has been approaching various authorities

seeking justice, but the same has been denied to him. He, therefore, submitted that petition be allowed and respondents be directed to reinstate the petitioner in service with full backwages.

3.2. As against that, Mr. Adil Mehta learned advocate appearing for the institution i.e. respondent no. 3 has submitted that termination of the service of the petitioner was only in view of the objections raised by the auditors in their audit report for the years 1980-81, to 1984-85. In the said reports it was observed by the auditors that the grant in respect of the petitioner's salary was not payable because the appointment was additional one. Mr. Pradip D. Bhate learned A.G.P. has submitted that since the audit department has raised objections with regard to the appointment of the petitioner as second Peon, the grant could not be released. He, therefore, prayed that petition be dismissed.

4. On going through the record of the petition, it appears that so far as the institution i.e. respondent no. 3 is concerned, admittedly, it had more than 100 students in the college. It also appears that in view of the Circular dated 27th February, 1980, issued by the Department of Education, Government of Gujarat two posts of Peon were available for this institution. The petitioner was selected for being appointed on the said post after inviting applications by public advertisement and after holding interview of the candidates who had applied for this post. It also appears from the record that the audit for the year 1980-81 was done in the year 1982-82 and the said appointment was approved and the salary of the petitioner was also granted by the Government. It further appears that it was only after 1981-82 audit report, the appointment was considered as irregular, as according to the audit department, no second post of Peon was available for this institution. Upon perusal of reply of respondent no. 3, it is stated that the audit report for the years 1981-82 and onwards upto 1885 were available to the President of respondent no. 3 only in the year 1985 and thereafter the grant was not sanctioned in respect of the salary payable to the petitioner. In fact, the recovery of the said amount was also recommended by the auditors. The question that is required to be considered is whether for this institution i.e. respondent no. 3 two posts of Peon or only one post was available. As stated above, the Circular of the Department of Education dated 27th February, 1980 amending the earlier direction issued vide Circular dated 27th April, 1979 with regard to the strength of the

employees, it was prescribed that when there was strength upto 100 students, one post of Peon was available and in case of more than 101 upto 200 students, two posts of Peon were available. Respondent no. 3 relying upon this Circular seems to have appointed the petitioner as second Peon in its institution. It is also an admitted fact that at the relevant time, the strength of the students in that college was over 100. When this is the say, what was the need for the audit department to come to the conclusion that it was an surplus or additional post and appointment on the said post was irregular because it was not in accordance with the strength prescribed by the concerned department. No specific pleadings have been advanced by the respondents in that behalf. Some indication can be had from the rejection order passed by the Deputy Secretary of respondent no. 2 dated 28th September, 1994. While deciding the said application, the concerned Officer has held that in accordance with the Circular dated 31st December, 1973, for the institution like respondent no. 3 only one post of Peon was sanctioned and since in respondent no. 3 appointment of one Bhagubhai Vasava on the basis of Peon was already made, appointment of second Peon was not in accordance with the said Circular and, therefore, no approval could be granted for such appointment. The petitioner has dealt with this objection by way of amendment to the petition in paragraph 20 (c) thereof under the caption "Grounds of objections to annexure-J". He has categorically pleaded in paragraph (d) thereof, that the said Circular was not applicable to respondent no. 3 since the classes of Drawing Teachers Certificate had been abolished. The said Circular is not produced by any of the parties to the proceedings. However, the learned advocate for the petitioner had a copy thereof, which was given to me for the purpose of ascertaining the contents thereof. The said Circular is now ordered to be taken on the record and it will be treated as part of this petition. Perusal of the said Circular shows that it is only in respect of Drawing Teachers Certificate and the staffing pattern prescribed for the said classes. In paragraph (d) it has been further stated by the petitioner that respondent no. 3 since long has been imparting education for Art Teachers Diploma (A.T.D.) for two years syllabus and Applied Arts Diploma (A.A.D.) for five years syllabus. It is, therefore, averred that the said decision of the Deputy Secretary was absolutely erroneous and he had placed reliance on wrong Circular. It may be noted here that neither respondents nos. 1 and 2 nor respondent no. 3 has made any attempt to controvert this fact, nor any submissions have been advanced by learned advocate appearing for the

respondents in this behalf. There is, therefore, no difficulty for me to accept that whatever that has been stated in paragraph (d) is true and the Circular dated 31st December, 1993, is not relevant for this purpose. It is, therefore, obvious that staffing pattern in relation to the post of Peon was in accordance with the Circular of the Department of Education dated 27th February, 1980, wherein two posts of Peon have been sanctioned. It is also to be noted that in the very first order of appointment that is in the year 1980-81, the fact regarding appointment came to the notice of the audit department and despite that no objection was raised. Not only that, but the appointment was approved and grant towards the salary of the petitioner was released. In fact, for what reasons, the audit report contained objections with regard to the appointment of the petitioner is not coming on record. No one has made this position clear. I therefore, proceed on the footing that it was 1980 Circular that governed the fact at that time. If that be so, the appointment of the petitioner as second Peon in respondent no. 3 was valid and no objections could be raised or fault could be found with respondent no. 3 for issuing advertisement inviting candidates for filling up the second post of Peon. In view of the aforesaid, the decision of respondents nos. 1 and 2 not to release grant in favour of respondent no. 3 towards the salary of the petitioner was absolutely unjust, improper and erroneous.

4.1. The affidavit filed on behalf of respondent no. 1 has made a cursory reference to the norms prescribed vide Circular dated 31st December, 1973. However, averments made therein are absolutely vague and they do not specifically meet with the contentions raised by the petitioner. It may also be noted here that respondent no. 1 has not even cared to annex the said Circular to the affidavit-in-reply filed on his behalf. It has been stated in paragraph 5 of the said reply that setup of Fine Arts college is governed by Resolution dated 31st December, 1973. However, the said Circular shows that it only refers to the Drawing Teachers Certificate which was as per the averment made in paragraph (d) of the petition.

In view of the aforesaid discussion, it clearly appears that the decision of respondents nos. 1 and 2 not to release grant towards the salary of the petitioner is erroneous and the impugned order of terminating the service of the petitioner by respondent no. 3 dated 29th August, 1985 is also illegal and it is required to be quashed and set-aside. The petitioner has also prayed

for quashing of the order of the Deputy Secretary dated 28th September, 1994 passed in Revision Application filed by him. In view of the aforesaid, the said order is also required to be quashed. The result is that both the aforesaid impugned orders are hereby quashed and set aside and the petitioner is ordered to be reinstated on his original post with continuity of service. The next question that is required to be considered is with regard to payment of backwages. Mr. Pandya has submitted that the service of the petitioner has been terminated in the year 1985 and the petitioner had been clamoring for justice, the respondents had not taken any action to redress his grievance and, therefore, they be ordered to pay entire backwages. However, the fact remains that in the year 1985 the order of termination was passed and, thereafter this petition is preferred in the year 1994. It appears that during the some intervening period the petitioner had even approached the Labour Court. But a gap of almost nine years between the date of termination of service and filing of the petition is quite big, the respondents therefore, cannot be penalised for that. Secondly, it is a matter of common knowledge, that due to paucity of time, this Court is not able to hear and dispose of this petition well in time and for that reason also the respondents cannot be saddled with the liability of payment of full backwages. In my opinion, ends of justice will meet after order of 50% of backwages is passed.

The final direction is that the petitioner be reinstated on his original post with continuity of service together with 50% backwages. The petition is, therefore, allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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